IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 254 of 2003

For Approval and Signature:

Hon'ble MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

NATTUBHAI BECHARBHAI PATEL

Versus

STATE OF GUJARAT

Appearance:

MR BS PATEL for Petitioner No. 1-10

MRS RANJAN B PATEL for Petitioner No. 1-10

MRS MANISHA L SHAH APP for Respondent No. 1

CORAM : MR.JUSTICE J.R.VORA

Date of decision: 20/06/2003

ORAL JUDGEMENT

1. Heard learned Advocate Mr.B.S.Patel for the petitioners and Mrs. Manisha L Shah, learned APP for the respondent. Learned advocates appearing for the parties

have requested this Court to hear this Revision Application finally and, therefore, the matter was heard finally.

2. This Revision Application is filed against an order passed by the learned Addl. Sessions Judge, Fast Track Court, Nadiad, District Kheda, on 30.4.2003 below an application filed by the present petitioners in Session Case No. 314/98. The present petitioners are accused in Session Case No. 214/98 pending before the Trial Judge in which being Sarpanch of village Undel and labourers on Muster of Panchayat preferred an Application at Exh. 26 stating that the act complained of removing of the encroachment of the complainant was covered under the duty of Sarpanch and other accused who are labourers on muster of Panchayat. It was the say of the present petitioners in Exh. 26 that the act complained of, which is alleged as an offence, is an act discharged in the official duty as Sarpanch and labourers and, therefore, according to Section 273 of the Gujarat Panchayat Act, 1993, sanction is required. However, the learned Trial Judge relied upon a letter of Taluka Development Officer to District Development Officer which is dated 19.11.1996 in which it is mentioned that though the Panchayat passed a Resolution No.7 on 17.8.1995 to remove the encroachment, but such Resolution was not passed in the elected body. It appears that the learned Fast Tract Court Judge has placed much reliance on this letter and rejected the Application at Exh. 26 filed by the present petitioners to drop the proceedings for want of required sanction under the Gujarat Panchayat Act, 1993.

3. During hearing, learned Advocate Mr.B.S.Patel, for the petitioners has drawn the attention of this Court to a xerox copy of Resolution No. 7 passed by Undel Gram Panchayat on 17.8.1995 authorizing the Sarpanch to remove encroachment on streets and on falias. In this view of the matter, it appears that the letter of Taluka Development Officer which is dated 19.11.1996, is required to be reconsidered. In addition to this, learned Advocate Mr.Patel also produced a decision of this court in Spl. C.A. No.7171/99, in which the present petitioners No.1 made a grievance before this Court for his removal from office for non-removal of encroachment as resolved by the Gram Panchayat. In view of this decision of this Court and in view of the Resolution No.7 passed by Undela Gram Panchayat, authorizing the Sarpanch to remove obstructions and Resolution is dated 17.8.1995, the Application Exh.26 is required to be reconsidered by the Trial Judge.

4. In this view of the matter, the order impugned below Application Exh. 26 in Session Case No. 314/98 is quashed and set aside. The Trial Judge is directed to afford fresh opportunity to the parties for hearing in respect of Application Exh.26. Learned Trial Judge also shall take into consideration the Resolution No. 7 dated 17.8.1995 passed by Undel Gram Panchayat and the decision of this Court in Spl.C.A. No. 7171/99 and shall decide the Application Exh. 26 afresh without being influenced by the order impugned in this Revision Application. Opportunity of hearing as well as opportunity to all parties will be afforded to produce any other documents relevant for the decision of Application - Exh. 26. The learned Trial Judge shall decide this Application before proceeding with the trial.

5. This Revision Application stands disposed of accordingly. D.S. is permitted.

(J.R. Vora, J.)

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